IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.20846 of 2006

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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SHRI MANHARLAL LALLUBHAI SHAH & 2 - Petitioner(s)
Versus
JOINT CHARITY COMMISSIONER & 8 - Respondent(s)

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Appearance :
MR GM JOSHI for Petitioner(s) : 1 - 3.
MR PR ABICHANDANI for Respondent(s) : 1,
MR HARSHIT S TOLIA for Respondent(s) : 2 - 9.
MR SUNIL L MEHTA for Respondent(s) : 2 - 9.

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
Date : 21/02/2007
ORAL JUDGMENT

(1) In light of the view that the Court is inclined to take the matter is taken up for final hearing and disposal today. RULE. The learned advocates appearing for the respective respondents are directed to waive service.

(2) This petition has been filed with the following prayers:

"**7**. On the facts and circumstances mentioned hereinabove, the petitioners pray to Your Lordships that:

a) be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction quashing and setting aside the impugned order dated 31.5.2006 passed by the Joint Charity Commissioner, Rajkot in Application No.41/10/2006.

b) During the pendency, hearing and final disposal of this petition, this Hon'ble Court may be pleased to stay the operation, execution and implementation of the order dated 31.5.2006 passed by the Joint Charity Commissioner, Rajkot in Application No.41/10/2006.

c) Such other and further relief that is just, fit and expedient in the facts and circumstances of the case may be granted."

(3) According to the petitioners, the facts which have prompted the filing of the petition are as follows:

"**2**. The brief facts leading to the present petition are as follows:

2.1 The petitioners state that the citizens of village Budhel which is situated in District Bhavnagar were desirous of collecting funds for the purpose of

constructing an educational institute in the name of Shri Bajrangdal Bhayjibhai School and, therefore, committee was constituted for the proposed Gramya Kelavani Mandal and also constituted Ramparayan Salahakar Samiti. The villagers fully cooperated in the activity of raising funds and Ramparayan by His Holiness Moraribapu Hariyani was conducted and substantial amount was collected by the committee. The respondents who are running a primary school in the name of Shri Gramya Kelavani Mandal, Budhel also wanted to participate and collection books were also given to the Principal and persons connected with the said society. However, the said amount was appropriated by the managers and the Principal of the respondents and did not deposit the amount with the Ramparayan Samiti. This Parayan was organized as back as in the year 1987 particularly, between the 18th April, 1987 to 26th April, 1987. The petitioners state that whatever amount was collected by the citizens and residents of village were duly deposited in the name of Ramparayan Samiti and the amount is now inflated to the tune of Rs.15,09,658/-. Not single paise is withdrawn by anybody, much less, the petitioners or any residents of the village and the amount has been retained as it is.

2.2 The petitioners state that after a period of more than 19 years, the respondents who claim to be the Trustees of Gramya Kelavani Mandal, Budhel approached the Joint Charity Commissioner by preferring an application purporting to be an application under Section 41-A of the Bombay Public Trusts Act and interalia contending that the amounts are unauthorizedly retained by the petitioners and the trust

needed the amount and, therefore, sought directions to the effect that the amounts of the trust which are lying with the members of the Ramparayan Samiti be directed to be deposited with the trust and the members of Ramparayan Samiti may be directed to hand over the material/literature/record of the trust lying with them. Copy of the application dated 20.2.2006 is annexed hereto and marked as Annexure 'A' to this petition."

(4) The stand of the petitioners is that the amount so collected by the villagers under the auspices of 'Ramparayan Samiti' belongs to the village, and none of the respondents, namely, respondent Nos.2 to 9 and the trust were entitled to the amount. That the petitioners are neither connected nor concerned with the trust and hence, no relief as prayed for by respondent Nos.2 to 9 could be granted by the Charity Commissioner in exercise of powers under Section 41A of the Bombay Public Trusts Act, 1950 (the Act).

(5) The Charity Commissioner did not accept the submissions of the petitioners and passed the impugned order dated 31.05.2006. While making the order the Charity Commissioner has directed that the amount lying with Bank of India, Krishnanagar

Branch, Bhavnagar in T.D.R. A/c. No.70847 as on 14.09.2005 in the form of various fixed deposits totaling to Rs.15,09,658/-, which are to mature on 25.03.2008 should be taken in the books of “Shree Gramya Kelavni Mandal, Budhel, Trust Register No.E/357/Bhavnagar”; the petitioners herein shall not be permitted to withdraw the said amount, nor utilize the same for incurring any expenditure. Furthermore, both the parties viz. the petitioners and respondent Nos.2 to 9 are directed as aforesaid. The bank has also been directed not to make payment of interest to any side and an endorsement that the amount belongs to Shree Gramya Kelavni Mandal, Budhel shall be made by the Bank Manager in the said account as well as fixed deposit receipts.

(6) The petition has challenged the aforesaid order, as stated hereinbefore, on the principal ground that the requirement of Section 41A of the Act is not satisfied: the petitioners are neither trustees of a public trust nor any person connected with such a public trust and, therefore, the Charity Commissioner could not have issued any directions in exercise of powers under

Section 41A of the Act. Elaborating on the submissions, it was contended that the directions can be issued only to either of the aforesaid two categories of persons viz. either the trustees or persons connected with a public trust, because the directions are for the purposes of administration of trust properly and accounting of income arising from the trust property for the purposes of due appropriation and application to the objects and for the purposes of the trust. That in the circumstances, there is no trust in existence in so far as the petitioners are concerned.

(7) The learned advocate appearing on behalf of respondent No.1 authority has submitted that the impugned order has been made by respondent No.1 authority on the basis of various documents which appear from Page 69 onwards and which have been referred to by respondent No.1 authority in Paragraph No.3 of the impugned order. According to him, the aforesaid evidence went to show that even if the petitioners could not be treated as trustees of Shree Gramya Kelavni Mandal, Budhel, at least they

could be treated as persons connected with the said trust and thus are amenable to be issued directions in exercise of powers under Section 41A of the Act.

(8) Mr. H.S. Tolia, learned advocate appearing on behalf of the respondent Nos.2 to 9, has vehemently submitted that the impugned order made by the authority calls for no interference as the same had been made after considering the evidence on record. According to the learned advocate, whether the said evidence was sufficient or not cannot be gone into by this Court in exercise of jurisdiction under Article 226 of the Constitution of India, and once the authority had recorded a finding on facts after appreciating the evidence on record no interference was called for. It was submitted that the directions made by the Charity Commissioner were in accordance with the provisions of Section 41A of the Act as the funds held by the petitioners were actually trust property, if one considers the backdrop of facts and circumstances in which the funds were collected.

(9) Section 41A of the Act relates to power of Charity Commissioner to issue directions to trustees and other

persons and reads as under:

> "[41**A. Power of Charity Commissioner to issue directions to trustees and other persons**.
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> (1) Subject to the provisions of this Act, the Charity Commissioner may, from time to time, issue directions to any trustee of a public trust or any person connected therewith to ensure that such trust is properly administered and the income thereof is properly accounted for or duly appropriated and applied to the objects and for the purposes of the trust.
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> (2) It shall be the duty of every such trustee and person to comply with a direction issued to him under sub-section (1).]."

(10) On a plain reading, before the Charity Commissioner can exercise powers under the aforesaid provisions he shall have to record a finding, at least in a case where a dispute is raised, as to whether the persons to whom directions are to be issued are either trustees of a public trust or are such persons who are connected with such a public trust. In other words, the directions can be only in relation to a public trust which is required to be properly administered and the income properly accounted for, or income duly appropriated

and applied to the objects of such a public trust and for the purposes of such a public trust. Therefore, without ascertaining as to whether the petitioners are trustees, or are persons connected with the trust, namely, Shree Gramya Kelavni Mandal, Budhel, the Charity Commissioner could not have issued any such directions. Admittedly, in the present case, the petitioners have categorically raised a dispute that they are neither the trustees of the said trust nor persons connected with the said trust. If this be the position the authority was bound in the first instance to record a clearcut finding as to whether the petitioners are connected with the said trust, and if yes, give reasons in support thereof which are backed by cogent and relevant evidence on record. Such a decision cannot be recorded on the basis of a general perception which the authority may hold on the basis of submissions of one or the other side. When the legislature has used the words 'persons connected therewith' the authority is required to bear in mind that the connection has to be of the persons with the Public Trust for which the directions are to be issued.

In other words either for the administration of such a public trust or for accounting and appropriation or application of the income of such a public trust to the objects of the trust or for the purposes of the trust.

(11) In the present case, the impugned order does not reflect as to on what basis the authority has made the order. The evidence referred to in Paragraph No.3 of the impugned order can at best be treated as evidence which would call for further inquiry into the matter, namely, an inquiry in the direction of ascertainment of the fact whether the petitioners herein are connected with the public trust, there being no finding that they are trustees. On going through the entire bunch of documents available from Page 69 onwards, right upto Page 112, it is apparent that the said evidence does not disprove the stand of the petitioners, namely, that the petitioners are neither trustees nor persons connected with Shree Gramya Kelavni Mandal, Budhel. Some of the documents reflect that during the period 1988 to 1994 some inquiries were initiated by the Office of the Charity Commissioner but the evidence thereafter does not show what was the result

of such inquiries. The order is equally silent on this aspect of the matter. In fact the order treats these documents or these pieces of evidence as 'other evidences' by clubbing them together. Thus, it is apparent that the authority has failed to appreciate the true scope and ambit of Section 41A of the Act in the factual matrix brought before him. The order in the present form cannot be sustained as the decision making process does not reflect application of mind and understanding of the provision by the authority.

(12) In light of what is stated hereinbefore, the impugned order is hereby quashed and set aside and Application No.41/10/2006 is restored to the file of respondent No.1 authority for taking a decision afresh in accordance with law. It will be open to both the sides to raise all contentions available to the parties in law, as well as produce additional evidence, if any, in support of their respective stands. The authority is directed to pass a fresh order after giving reasonable opportunity of hearing to both the sides and taking into consideration all the evidence which is available

on record and which may be placed on record by both the sides.

(13) In the meantime, the directions issued in the impugned order shall not be operative, but neither the petitioners nor respondent Nos.2 to 9 will have any access to the amount in question in any manner and will not use the amount in any manner without prior permission of the Charity Commissioner during pendency of the proceedings before the Charity Commissioner till the point of time he passes a fresh order, as directed hereinbefore.

(14) The petition is allowed accordingly in the aforesaid terms. Rule made absolute. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

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Bhavesh*